

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, March 9, 2015, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President, Bill Byers, Brad Overton, Jeff Willis.

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director; Molly MacGregor, Staff.

MEMBERS ABSENT: Jeff Valiant, Amanda Mosiman, and Richard Reid.

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Jeff Willis and seconded by Brad Overton the Minutes of the last regular meetings held February 9, 2015 were approved as circulated.

The President explained the rules of procedure.

REZONING PETITIONS:

PC-R-15-05 – Petition of Bryan Hartke and Dale Hartke by Ronald Freson, Atty. To rezone 18.29 acres located on the W side of Libbert Rd. approximately 60' S of the intersection formed by Libbert Rd. & Vann Rd., Ohio Twp. from "A" Agriculture to "C-4" General Commercial. *Complete legal on file. Advertised in the Standard February 26, 2015.*

Ronald Freson, Attorney, Brian Hartke, Don Lee, and Jim Biggerstaff were present.

The President explained that this rezoning goes along with a primary plat so they will do them together.

SUBDIVISIONS FOR PRIMARY PLAT APPROVAL:

PP-15-06 – Hartke Commercial Park by Bryan Hartke and Dale Hartke by Ronald Freson, Atty. 18.29 acres located on the W side of Libbert Rd. approximately 60' S of the intersection formed by Libbert Rd. & Vann Rd., Ohio Twp. *Complete legal on file. Complete legal on file. Advertised in the Standard February 26, 2015.*

The President called for a staff report.

Mrs. Rector stated we have all pay receipts. She said we are missing green cards from Sandra Freels and Jessie & Katie Martin, so they will need to bring those in. She added this notice and the notice for the rezoning petition were sent in the same envelope. She stated the comprehensive plan has no projection on this particular property but the projection to the south and farther west is commercial and farther to the north and east is moderate to high density residential. She said the existing land use is vacant and most surrounding property is zoned Agriculture. She stated there is some R-1A to the east (within 500' radius) and "C-4" to the south (within 500' radius being proposed Meijer store.) She said East across from the proposed Meijer store is Bellmoore Landing Subdivision (C-4) and there are residences across Libbert Road from the subject property. Mrs. Rector stated there are areas of the property that lie within an AE 100 year flood plain as well as some 500 year flood plain. She said any buildings being constructed within the 100 year flood plain area will require a certified plot plan certifying the first floor elevation will be 2' above the base flood elevation ten feet around the structure. She said all lots will access Libbert Road and each lot will be required to obtain a commercial driveway. Mrs. Rector stated the stated use is a Commercial subdivision which would be allowed in that zoning.

Mrs. Rector stated the Primary Plat is the same thing with the return receipts. She said this property does lie within the TIFF District that has been established by the Commissioners and Economic Development. She said the flood plain is the same. She said they are proposing three lots and all lots are 5+ acres. Mrs. Rector stated when notices were mailed out for the subdivisions that are on agenda for tonight, when we gave the notices the meetings were pre-typed on there that Drainage is at 2:30 and the Commissioners are at 4:00. She stated at the first of the year the Commissioners had changed the meeting times to 8:30a.m. for the Drainage and 10:00a.m. for the street plans. She said we went to the meeting this morning and the Commissioners approved the street plans with the condition that no remonstrators show up at 4:00p.m. Mrs. Rector stated she came up here at 2:30p.m. for Drainage and 4:00p.m. and no remonstrators showed up against any of the plats. She added that this was a mistake they didn't catch when they gave the notices out 21 days ago and that is how they handled it today. Mrs. Rector stated on this particular subdivision, when Mr. Hartke and Mr. Biggerstaff came into the site review meeting they were told by Mr. Baxter that no drainage plans would be required for lot one, which they already have a purchaser for that lot. She said for lots two and three, for any Improvement Location Permits to be issued they would have to bring each one back before the Drainage Board; well the Drainage Board didn't like that so they want it to be labeled on the plat, a condition of the approval that lot one did not require drainage plans, and lots two and three are not developable lots at this time. She said they will have to re-plat lots two and three and come back and get Drainage Board approval. She said they wouldn't pass it that way so as part of their approval for the plat that will have to be a condition stated that will go on lots two and three. She said they ruled no improvements to Libbert Road and they will have to have commercial driveways installed for each lot. She stated Newburgh Sewer has capacity to serve the subdivision. She said Newburgh Sewer owns a 60' strip to the north of this property that runs to their lift station. She said it is identified as a roadway; however, it is a private roadway to the lift station, not a public right of way; however, the County Thoroughfare Plan does project Vann Road continuing on through to Epworth Road at some time. She added that does not affect this subdivision. She stated Chandler water has capacity. She said it is a three lot commercial subdivision. She stated there is a Marathon Gas Line running through this property. She said lot

one's driveway will cross over this easement and they should obtain a consent agreement for the driveway to cross the easement. Mrs. Rector stated the primary approval should be subject to the County Commissioners approving the rezoning petition at their April 13th meeting.

The President asked if they had anything to add to the staff report.

They did not.

The President called for questions from the Board.

Jeff Willis asked if there was a reason each lot was going to have it's own drive instead of sharing the drive going back to lot one.

Mr. Biggerstaff stated at this time the present lot, which is committed is lot one so we made that a part of lot one knowing that the other issue is part of it is in the flood plain because FEMA mislabeled it so they have to amend that and that's all that is provided at this time and we don't know the other uses regarding retention, which is normal.

Jeff Willis stated that Libbert Road is going to get a lot busier and he didn't know if they should have a shared drive instead of the three commercial drives there.

Mr. Biggerstaff said that is possible. He stated they will have to go back to the Commissioners for lots two and three and that will be discussed at that time.

Mrs. Rector stated that at site review Bobby Howard had no problem with there being three entrances.

Mr. Biggerstaff said they have dedicated an additional 40 feet of right-of-way as part of this plat.

The President asked if the pipeline was there.

Mr. Biggerstaff stated it is there.

The President asked if they have had any discussions with them and if they foresee any issues.

Mr. Biggerstaff stated that they have talked to them and they would rather have it covered; they only have casing requirements and he does not see any issues.

The President called for questions from the Board or remonstrators. Being none he called for a motion for the rezoning.

Bill Byers made a motion to approve a positive recommendation for PC-R-15-05 to the County Commissioners. The motion was seconded by Jeff Willis and unanimously carried.

The President called for a motion for the primary plat.

Bill Byers made a motion to approved PP-15-05 subject to a consent agreement for the Marathon Pipeline easement being obtained, drainage approval, and also subject to the rezoning being approved by the County Commissioners. The motion was seconded by Jeff Willis and unanimously carried.

PP-15-04 – Lewellyn Place No. 3 by John R. Lewellyn. OWNERS OF RECORD: John R. Lewellyn and Chandler Natural Gas Corp, John R. Lewellyn, Pres. 16.40 acres located on the S side of SR 62 W approximately 1200' E of the intersection formed by SR 62 W & Rockport Rd., Boon Twp. *Complete legal on file. Complete legal on file. Advertised in the Standard February 26, 2015.*

Bill Bivins and Lynnette Lewellyn were present.

The President called for a staff report.

Mrs. Rector stated we have all return receipts from certified mail except for one from Donald and Evelyn Henderson but we do have a signed waiver of no objection. She said this is a "C-4" General Commercial and Agriculture with no flood plain. She stated this is a two lot subdivision; Lot 1 is Mr. Lewellyn's home. She said he is taking a portion of the property from Chandler Gas to add to the home site. Mrs. Rector said there is an existing building on this property. She stated lot 2 belongs to Chandler Natural Gas and the plat says it is not a building site. She said there is a discrepancy on the plat book page and GIS program over some property that was originally a railroad right-of-way. She said the legal on the right-of-way is virtually unplatable as it is written; however according to the deeds calling out the surrounding land, it appears there may be a 10 foot to 20 foot gap between the Chandler Gas property and the Lewellyn property. She said we can't figure it out and it is her understanding that we go by what was submitted by the engineer and surveyor and if any corrections need to be made he will have to make them; it is not up to us to make the call.

Attorney Doll said yes.

Mrs. Rector said lot 1 has an existing driveway on SR 62 and lot 2 fronts on Rockport Road. She said the Commissioners ruled no improvements will be required to Rockport Road. She added the Drainage Board ruled no drainage plans were required. She said lot 1 has an existing septic and lot 2 is not a building site. Mrs. Rector stated Boonville water has lines in place. She added that this is a two lot subdivision and it is in technical conformity. She said she believes Mr. Lewellyn has solar panels on the property and they want it cut out to be a part of their property and that is what has caused this subdivision. She said they are just taking a part of what the gas company owns and adding it to their home site.

Bill Bivins stated they are basically doing a lot line adjustment.

The President asked about where the discrepancy was.

Mrs. Rector said it is in the little wedge on the plat and no one could figure it out.

Bill Bivins stated four people have tried and no one could figure it out.

The President asked if Bill Bivins had anything to add to the staff report.

Bill Bivins said no.

The President asked the Board for questions. Being none he asked if there were any remonstrators present for or against this project. Seeing no remonstrators present he called for a motion.

Brad Overton made a motion to approved PP-15-04. The motion was seconded by Jeff Willis and unanimously carried.

PP-15-05 – Replat of Lot 76 in Lexington Subdivision a Planned Residential Unit Development by Barrington Development Group, Inc., Bruce Miller, Pres. 6.07 acres located on the W side of Vanada Rd. approximately 950' S of the intersection formed by Vanada Rd. & Ferstel Rd., Ohio Twp. Lot 76 in Lexington Subdivision a Planned Residential Unit Development recorded in the Office of the Warrick Co. Recorder in Doc. # 2006R-01448-1 &2. *Complete legal on file. Advertised in the Standard February 26, 2015.*

Bruce Miller was present.

The President called for a staff report.

Mrs. Rector asked about four return receipts that had not been returned.

Bruce Miller stated he sent the white pay receipts but he has not received the green cards back yet.

Mrs. Rector stated this is an "R-2B" zoning which requires 6,000 square feet or 1,500 per dwelling unit whichever is greater. She said that a portion of the subdivision falls in an AE 100 year flood plain so any structure located within that area will be required to have certified plot plans done by an engineer certifying the area 10' around the structure has been raised 2' above the BFE. She stated there are two lots. She said this is a re-plat of Lot 76 in Lexington Subdivision which was done as a Planned Residential Unit Development. She said they have submitted a vacation for the right of way of the previously platted Glenview Drive and some of the PUE and DE on the lot. She added they are splitting the lot in order to put a clubhouse and pool on the new lot for the subdivision owners and the subdivision is showing the location of the clubhouse and pool which is located on lot 76A. She said she does not think Mr. Miller has any plans for lot 76B at this time. Mrs. Rector stated this would have to be conditioned upon, because the Auditors office also set the meeting for the vacation of the street and public utilities for 4:00 today because they weren't aware that the meeting times have changed either, so they are going on the 23rd of this month. She said this will have to be conditioned upon the street

vacation and the public utility and drainage easements. Mrs. Rector stated the street construction plans for the new roadway, St. Clare Drive was approved by County Commissioners today but there needs to be a few amendments to the street plans; they approved it with the condition the Mr. Howard signs off on the changes. Mrs. Rector said they need to obtain a consent agreement with Indiana American Water regarding the existing water easement to be located within the right of way of St. Clare Drive. She stated the drainage plans were approved. She said they will have to go back to the Drainage Board on the 23rd because Mr. Baxter failed to put on there, the drainage easement they want to vacate. She said they have Newburgh sewer and Indiana American water. Mrs. Rector so this plat is conditioned upon street vacation, public utility, and drainage.

The President asked if he had anything to add to the staff report.

He said no.

The President asked the Board for questions. Being none he asked if there were any remonstrators present for or against this project. Seeing none, and ascertaining no questions from the Board he called for a motion.

Jeff Willis made a motion to approve PP-15-05 conditioned upon the street vacation, the public utility and drainage vacations, and a consent agreement being obtained from Indiana American Water. The motion was seconded by Brad Overton and unanimously carried.

OTHER BUSINESS:

Formal Complaint: Corinna Bell ~ 6631 Heathervale Ct. Newburgh, IN ~ Lot 8 Heathervale Sub. ~ Alleged junk salvage yard in an "R-2" Multiple-Family zoning district.

Corinna Bell was present.

The President called for a staff report.

Mrs. Rector stated complaint was filed on January 21, 2015 stating *"There is excessive trash being stored on the south side of the residence. I have seen rodents believed to be rats in and around the yard. There is a noticeable odor coming from the residence on warm days."* She said Dennis Lockhart visited the property on January 30th and commented that the *"property is a mess. Trash in the side yard 8 feet tall. Looks like no one lives there. There is mail in mailbox 3 months old."* She said a letter was sent to the property owner on February 2nd notifying them of the possible violations and asking them to correct them and/or attend this meeting. She said Ms. Bell, the owner of the property called the office last week and said she had spoken with a company to clean up the property and it was to be done before this meeting. Mrs. Rector informed Ms. Bell that they would do an inspection today and if the property was cleaned up then she did not need to be here but if it wasn't gone by Friday then she needed to be here at the meeting. She stated Dennis Lockhart visited the property on March 4th and again this morning and reported no change or cleanup.

Corinna Bell was present.

The President asked if somebody lived there and if she had anything else to add to the staff report.

Ms. Bell stated someone does live there. She said she tried to contact somebody to come clean it up. She said he was supposed to give her a quote but has not gotten back with her. She asked if anybody had any recommendations for somebody to clean it up.

Mrs. Rector asked if she was renting the house.

Ms. Bell said her son and his friends live there.

Mrs. Rector asked if she could have them clean it up.

Ms. Bell stated she has tried.

The President asked her how long will it take for her to have it cleaned up.

Ms. Bell said they were supposed to be picking it up but then they had the bad weather. She said the trash is not 8 feet tall because she has a picture of it but it is high, and yes there are chairs on the roof. She said she would like to hire somebody to clean it up for them but she does not know anybody that provides that service and this guy didn't get back with her.

Attorney Doll said there may be adds in the Classifieds in the Courier and Press.

Ms. Bell said she would look but she doesn't get the paper.

Attorney Doll said it would be online.

The President asked Ms. Bell if she could have it cleaned up in 30 days.

Ms. Bell said she would try.

Attorney Doll said the only thing is that the Ordinance has a fine potential for violations such as this and the courts could pose a fine up to \$300 per day so it is certainly in her best economic interest to make this a priority to get this cleaned up, you don't really want to go in front of a judge about this.

Ms. Bell said no she does not.

The President asked if there were any remonstrators present.

Mark Beard, at 6575 Heathervale Court, approached. He stated this is not something that has happened overnight; it is an ongoing problem and it is not just the trash, it is kind of like a frat

house. He stated open records requests shows numerous times there has been police called to the residence for various reasons, this is just what we have to deal with visually. He said there are so many cars that come and go; he doesn't know how many people live in that house but they are all perfectly competent able people to clean up trash. He said they had the same problem with another house in this neighborhood on the other side of Heathervale and that got taken care of. Mr. Beard stated this has been a long time coming.

Eric Krogman approached the podium. He stated he also lives on Heathervale Court. He said the chairs that you see on the roof have been there since July when they lite off fireworks all night long. He said there was probably 30 plus people there. He said the police were called out there; he doesn't know how many times the police have been out there but he can find out. He stated they took photos yesterday from the neighbors' side yard. He stated they should not have to live next to this. Mr. Krogman said there is underage drinking, alleged drug use, there are people in the neighborhood that are scared. He stated this is the first step to getting it cleaned up and getting them evicted and getting somebody else living there. He said there are over 20 kids that live on the street. He said this is more than just an eye sore, it is a health hazard and he has lived there for more than 16 years and they shouldn't have to live next to this. He said they keep their yards and houses nice and this is not being a good neighbor.

Brad Overton asked how long has this been going on.

Mr. Krogman asked Ms. Bell when she moved out.

Ms. Bell stated in June.

Mr. Krogman said that sounds about right, it has been going on since June.

The President asked Ms. Bell if she moved out in June.

Ms. Bell said that is correct.

The President asked if they pay rent.

Ms. Bell said yes.

The President asked how many people are living there.

Ms. Bell stated 4 people live there.

Mrs. Rector stated that would be against the zoning ordinance unless they are family.

Ms. Bell said her son lives there.

Attorney Doll asked if the 4 people are related.

Ms. Bell said no.

Eric Krogman submitted photos to the Board.

The President stated they will be kept as part of record.

Bill Byers asked if anybody has complained to the Health Department.

Mr. Krogman stated he believes someone did complain to the Health Department. He said fortunate for them they don't have to see the back yard.

Mark Beard stated the photos they have in front of them do not do it justice. He stated when Ms. Bell resided there, there was never an issue. He said it has just been since she moved out, they are not being good neighbors.

The President asked how old the kids were.

Ms. Bell stated her son is 20 and the other ones are about that age, maybe a little bit older; old enough to know better.

Jeff Willis asked if they have trash pickup there.

Ms. Bell stated she canceled that when she moved out.

Mrs. Rector asked Attorney Doll to explain the "R-1A" house and renting out to 4 people.

Ms. Bell asked why because it has 4 bedrooms.

Attorney Doll stated it is meant to be a single family.

The President said this is like a boarding house.

Mrs. Rector stated her property is zoned residential which is a one family zoning and this is basically like having an apartment which takes a multiple family zoning so she is also in violation of that by renting out to four different individuals.

Attorney Doll continued who are not related to each other. He said if it was a family of four, that is different, but it being four 20 year old boys, which is a multifamily use which they should not be doing in a single family district. Attorney Doll asked why hasn't Ms. Bell evicted them.

Ms. Bell stated it is her son.

Attorney Doll asked if she understood what he is doing to her property.

Ms. Bell stated she understood and he understands that she will be selling the house in June when their lease is up.

Attorney Doll said she won't get anything out of it. He said if she is going to try to sell the house in this condition....how is she going to do that.

Ms. Bell said she is going to try to clean it up first.

Mrs. Rector stated she wanted to take back her previous statement; it is "R-2" zoning which is multifamily.

Attorney Doll said he still thinks it is inappropriate to have four 20 year old boys living there.

Ms. Bell said they are adults.

Attorney Doll stated he understood that but they are also maintain a public nuisance and they are also maintaining a junkyard in a residential district. He said so what the courts have done in Warrick County on previous cases is they impose fines of up to \$300 a day. He said he can show her a house on the outskirts of Chandler that has a \$20,000 lien on it which the courts have imposed because of their failure to clean it up. He said he is not promising what a judge will or will not do he is just expressing what she is exposing herself to as a landowner and it would be a lien against the property which makes it difficult to sell. He said so it is clearly in her interest to clean it up. He added they do not see the senior citizen suffering as they so often see; many of the people that come before them are senior citizens that have physical impairments which disallow them to clean their property up but in this case we have four able bodied boys. Attorney Doll stated he doesn't know what to tell her to get their attention other than to tell them the \$300 a day fine is their responsibility although it is hers. Attorney Doll stated his recommendation to the Board is if they are going to give her additional time to clean it up it is very limited.

Brad Overton stated it appears in the photographs that most of the trash could be carried out and thrown in a truck; it is not like they have a bunch of old cars or anything. He stated so his recommendation would be to allow them 30 days to clean it up and come into compliance.

Bill Byers stated he would like to recommend less time than that; two weeks.

Attorney Doll asked Ms. Bell if she had access to a pickup truck.

Ms. Bell said no she doesn't.

Attorney Doll asked if any of the boys do.

She said no.

Attorney Doll stated she could rent one. He said that is what this takes, a pickup truck and a few loads to the County Landfill.

Ms. Bell stated she agrees.

The President stated they have two motions on the floor; he will entertain a motion to one of them. He added in fact he will make a second motion to the two weeks. He said he would recommend they send Dennis or he will go out there himself in two weeks from tonight, which would be the 23rd. He said if it's not cleaned up at that point then...

Bill Byers said they'd turn it over to the judge.

Attorney Doll stated so if the property is not cleaned up by the 23rd, baring inclement weather, we could get snow...

The President said it may rain but it is going to be wet and muddy but this is a one day job. He added they could go to Home Depot and rent their truck. He added that on a Saturday with four boys they should be able to whip that thing pretty quick, and if they don't then they are looking at perhaps the Judges fine.

Attorney Doll said so the second part of that motion is to file suit.

The President said yes.

Attorney Doll said so we are skipping pass go, do not collect....

The President said this is a simple clean up.

Attorney Doll stated so the 23rd is a Monday, so the point they have made that the property has to be cleaned up by the 23rd and if it is not cleaned up, then on the 24th of March she will be sued. He stated that is not a threat, it is the motion.

The President stated we have a motion on the floor and a second, he asked if there was any more discussion; there wasn't and the motion was unanimously carried.

Mrs. Rector stated he will be out there to take pictures on the 23rd.

ATTORNEY BUSINESS:

Engelbrecht Place Sec. 2 Phase 1

Attorney Doll stated we have a problem. He said Warrick County Area Planning Commission was contacted by Chris Wischer, who is a partner with the Bamberger law firm, and practices extensively in real estate. He said Mr. Wischer had been contacted by a local bank to render an

opinion of the validity of a legal description to a lot in Engelbrecht Place Section 2 Phase 1, and there had been a title commitment issue, the property had sold, and there was a closing and a deed was recorded conveying all of lot 27 to the buyer, whoever that may have been. He said after the closing it was discovered that lot 27 and certain other lots of this subdivision, after the subdivision, had been cut in half by the developer without amending the plat. Attorney Doll stated they had done that by creating a meets and bound description on their own and calling half of lot 27, 27A and the other half 27B. He said adding to this dilemma is they have built duplexes on these lots and so unit A is on one half and unit B is on the other and so they have made up a homemade description that is not contained on the plat and they have sold these properties to buyers. He said the question Bamberger had for Warrick County was, they wanted to know if lot 27A as described in the attached description is a properly subdivided lot under the Warrick County Subdivision Control Ordinance and my answer to them was no it was not. He said secondly they wanted to know if sold and conveyed as described would the homeowners be precluded from obtaining building permits in the future for improvements to the portion of the building on their part of the lot and my answer is yes, they cannot get future building permits.

Brad Overton asked if they could get the current permits.

Attorney Doll said no, not if we had known the truth. He said lastly they wanted to know if the subdivision "is okay" or are variances required for setbacks because as you see, there are no side setbacks; these houses are divided down the middle of the structure. He said this has happened to several of the lots and there are third parties who have paid money and bought them and they are not properly described, full lots on the plat as approved by Warrick County. He said since Bamberger has brought it to their attention they need to address the issue. Attorney Doll stated he has held discussions with Mrs. Rector about this and it appears to them, that where this is occurring and this is one section on one street where it is happening, if that would be re-platted as a PUD, and describe them as lots 27A, 27B, etc.; he said then there wouldn't be any issues with the setbacks and they could convey legal title to the properties as lots 27A and 27B. He said but just self-helping and doing it on their own and recording deeds is inappropriate and it creates all sorts of problems. He said imagine this for a moment, if you have a legal lot and it is lot 27, and you sell half of it to two people who go to two different banks and borrow money on their halves, who has the valid lien? He added it is probably the first bank to record the mortgage and it is probably a lien on the entire lot 27 because that is the only legal description that is legal for Warrick County. He said which means if he was the second purchaser of half of a house, it might mean that my neighbor's mortgage is on my house, and I think it would, and that his mortgage would be on his neighbor's house as a second mortgage. Attorney Doll stated this is a mess. He said he fears that when these people try to sell their homes in the future they will not be able to do it.

The President asked if each of the other descriptions are recorded somewhere.

Attorney Doll stated he doesn't think the Recorder compares descriptions when they record these.

Mrs. Rector stated they don't, and she doesn't know why the Auditors office didn't catch this because normally they do. She added that all of the permits they gave were for a duplex on one lot.

Attorney Doll said he thinks what happened is that condominiums are finding it very difficult to be financed in today's market; the banks are more comfortable making a loan on a traditional single family home sitting on a plot of land and more adequately control if there is another recession. He said we have had some properties that have started out to be like condominiums that ended up being changed, like what Morley and Associates did. He said so as a consequence he thinks that is what drove this event, it is just the means of which they achieved this is not valid under our ordinance or the State of Indiana. He said this is a lot in a subdivision and you can only sell it as the entire lot. Attorney Doll stated you may be able to do a lot line adjustment between neighbors, but you can't cut the lot into two lots and sell it without a meets and bounds and that is what is occurring. He said if the Commission is so inclined, he thinks he needs to contact the developer with a cease and desist notice but also tell them that they need to correct it.

The President asked if the only way to come into compliance is a PUD.

Attorney Doll said yes.

Mrs. Rector agreed and said it would be just like they have across the street.

Attorney Doll said he thinks he should also notify the landowners to tell them that the legal description of their lot is inaccurate and is not valid.

The President asked how many lots are involved.

Mrs. Rector stated there are six, lots 26 through 31.

Attorney Doll stated if we don't tell the landowners and then later on they find they have the inability to expand or make improvements or to sell it, they could come back and ask why we didn't take action.

Brad Overton asked since the Auditor approved this...

Attorney Doll stated what happens is when you transfer a piece of property you create a warranty deed and a real estate disclosure which first goes to the County Assessor's office, and they find

the tax identification number and verify what it is; that should have been the first red flag. They then send it to the Auditor's office...

The President said the Auditor divided it and gave it two numbers.

Attorney Doll said that is right. He stated the Auditor's office is where they record it for the mailing of the tax statements because they keep the index for the taxpayers. He said lastly you go to the Records office which looks for stamps. He said if you notice on the warranty deed in their packets, on the bottom it says "Duly entered for taxation, Warrick County Auditor," so it has been approved by the Auditor on January 7, 2015, and the Assessor doesn't stamp the deed, they stamp the real estate disclosure statement showing it's been entered upon the tax records for assessment purposes. He said that is the process.

Brad Overton said so the person who could have reviewed this is the Assessor.

Attorney Doll stated the Assessor should have seen this first and said they are not doing this. He said then the Auditor should have caught it because it is a subdivision. He said the Recorder would probably have no way of knowing. He said the Recorder does not have the time to take every meets and bounds description and go to the file and recorded plats and look up to see if there is a 27A and 27B on a recorded plat; that is not a reasonable expectation that they have the time to do that. He said these three steps to record these, which he does all the time, can be done in under ten minutes.

Mrs. Rector stated lot 26 has not been given a permit and it has not been split.

Attorney Doll said so 27, 28, 29, 30, & 31; five lots.

Brad Overton stated he is trying to figure out how we prevent this from happening again. He said so the Assessor actually had the physical document that they could have compared at some time.

Attorney Doll stated they have a computer screen; they have the GIS maps.

Mrs. Rector stated we all do. She said when we issue a permit, it would say duplex or something like that, and the Assessor gets that so she would have that.

Brad Overton said so we issue the permit on the entire lot then it goes to part two where it is split into two lots instead of one so his question is there should have been something referencing the very first when they did their part so there should have been a comparison.

Attorney Doll stated the GIS map would have shown just lot 27 so they could have seen it. He added we can access that from home and see it.

Brad Overton said so that is something that needs to be, a step put in there.

Mrs. Rector stated she doesn't know if the Assessor, Auditor, or Recorder can deny recording anything.

Brad Overton said but if it is something different than what they initially have...he said he guesses what he is getting at is where is our legal obligation.

Attorney Doll stated we don't have the time to do it but there was a request before to have Mrs. Rectors office preapprove every deed before it is filed, and that would mean there would be a fourth step in the process in which a deed would have to first come to the APC where they would have to look it up and see if it is the whole lot or half a lot and they would stamp it and then it would go to the Assessor. He said but we do not have the time to do that.

Mrs. Rector added we do not have the staff either; there are hundreds of deeds a day.

Brad Overton asked if there is a liability on our part.

Attorney Doll stated he thinks that once they became aware that this has occurred to a subdivision in our jurisdiction and if we don't take any steps to correct it and stop it from occurring in the future then we do have liability risk to the homeowners.

Brad Overton said he understands, even going back and trying to correct it and change it to a PUD is like spitting in your face and saying "oh I made a mistake..."

Attorney Doll said he is not just trying to suggest corrections that would bring it into compliance with the law, he is also trying to fix it so whoever the folks are that bought these units will not be harmed. He said we have a duty to try to fix their problem even though we didn't cause it. He said to do that it seems to him and Sherri that a PUD would do that; we can't force a PUD on it. He said it would have to be the developer coming forward to do it.

Mrs. Rector stated actually it would have to be every lot owner in there.

Attorney Doll said how many property owners are there now, and just that side of the street, not the whole subdivision. He said to do that he thinks they need to talk to every landowner and to the developer to point out this is an illegal act and they cant do it.

Brad Overton stated that is his problem, that somebody did something wrong that they knew was wrong and then too far down the road they caught it but we can go back and remedy the situation because we have possible harmed two people who had no idea there was a problem. He said he wishes they had a way to go after the developer for making this kind of obvious, blatant infringement upon what they should have done and this is harmful to the people that they sold these lots to.

Attorney Doll stated it is his opinion that the people who bought the half lots have standing if they think they have incurred damages to bring a suit, but that we would not. He said we have standing to correct the illegality and to keep it from occurring but not to seek any kind of monetary damages. He said we can see who the developer is and who the surveyors are and bear that in mind when they appear before us in the future.

Brad Overton said he thinks they should come up with a way to prevent this from happening again because if it has happened once he is sure it will happen again.

Bill Byers asked what is the responsibility of the attorney who drew up this deed.

Attorney Doll stated usually there is a disclaimer at the bottom that says "I am not attesting to the accuracy of the descriptions. That they have been furnished to me by one of the parties and I am relying upon that and I am informing everyone that I am relying upon that and that as such by their acceptance of this transaction they are acquiescing to their reliance upon those facts as provided to me by one of the parties." He said but when he gets a legal description he normally gets them directly from a title insurance company that certifies they have searched the records and looked at the plat and whole the nine yards.

Bill Byers asked if he has ever looked and seen one that is illegal.

Attorney Doll stated he has one on his desk right now. He said if there is a circumstance that the legal the county has does not match the deed then he goes to the courthouse and tries to figure out why.

Jeff Willis asked if there was title insurance on any of these.

Attorney Doll said yes there is.

Jeff Willis asked why didn't they catch it then.

Attorney Doll said he does not know. He said but they did send it to Bamberger and said we have a problem with this and that is when Chris Wischer emailed Sherri and said what is going on in her county; but they got the deed recorded before it was caught.

Brad Overton asked if we could revoke the building permit.

Mrs. Rector stated it is already built, all except one lot. Mrs. Rector stated the only one they could stop was lot 26 which they have not issued a permit on.

Attorney Doll said that could be a motion.

Mrs. Rector said the original developer sold the lots to another company we'll say.

Attorney Doll said a related person.

Mrs. Rector said yes so they sold them as whole lots. She said so they are calling the developer the person who bought the lots as a whole, not the original developer.

The President said whoever divided and sold them.

Mrs. Rector added and then they'd just notice the people who have bought them that there is a violation, but they are not responsible for bringing it into compliance just the person who sold it to them.

Attorney Doll stated he thinks they have to notify. He said he has the deed to lot 27B belonging to James and Debra Egen, he thinks they have a responsibility to notify them that the deed to the property that they bought and paid for is not proper under the Indiana law and the Warrick County Subdivision Ordinance.

Brad Overton asked if we should send something to all of these people.

Attorney Doll stated his recommendation is they allow him to contact to the last developer which is public record and each landowner and tell them the division of these lots is not proper or legal and it has to be remedied and if they want him to tell them how to remedy it is up to the Board.

Jeff Willis said he thinks if they tell them what they should do it may not be the best course, and then if it comes in front of Board for a PUD and it gets denied for any reason.

Mrs. Rector said but then they will come to her and ask what to do.

Brad Overton said they already have a PUD in their neighborhood anyway.

Mrs. Rector stated they need a PUD zoning with a plat.

Attorney Doll stated across the street from this is a PUD that was done properly with four-plexes.

Jeff Willis said if they call and ask then you can tell them that one option is to do a PUD but he doesn't think we should put that in writing.

Attorney Doll stated he would be happy to write the affected properties and to tell them that there has been an illegal division of their lot and it is in violation of the law and it has to be corrected and give them time to contact us to decide how they want to correct it. He said if they don't then it is violation just like the lady earlier tonight with the trash, and it is subject to the \$300 a day fine and can be taken to court.

The President questioned if they could do it themselves without the developer.

Attorney Doll said if they all agree, but there is ten of them.

Jeff Willis asked what if we tell them that is how they can fix it and one of them doesn't want to do that.

Attorney Doll said they are not going to be happy about going out and hiring a lawyer and an engineer.

Bill Byers stated then they are harmed.

Attorney Doll said yes, and then they are going to have to have their own civil engineer to draft up the PUD.

Jeff Willis stated he doesn't know if they should contact the developer first so he can have a chance...send him a letter tomorrow and send the homeowner's letters on Thursday.

Attorney Doll stated he does not think they should separate them. He stated they should notify them all at the same time and let the chips fall as they will to fix the problem. He said he doesn't think they should have a good 'ol boy relationship with one of the parties without sharing the same amount of information to everybody.

The President said if he was one of the owners and got a letter he would call the developer first anyway.

Bill Byers asked if we could call it an invalid transaction instead of an illegal transaction.

Attorney Doll said yes.

Bill Byers made a motion to notify everybody. The motion was seconded by Brad Overton.

Jeff Willis asked if he meant all of the owners or everybody involved.

Bill Byers stated that he meant everybody involved, including the actual developer not the original.

The motion was unanimously carried.

Brad Overton said he would like to make a motion to ask Mrs. Rector to come up with a way so this would not happen again.

Mrs. Rector asked about lot 26. She asked what if they come in tomorrow for a permit for a duplex.

The President said no duplexes.

Attorney Doll that it needed to be a motion to cover Sherri.

The President made a motion that lot 26 is single family only unless they include it in whatever they are going to do to correct the other lots. The motion was seconded by Brad Overton and unanimously carried.

Brad Overton asked Sherri if three months would be enough time for her to look at this issue.

Mrs. Rector said sure.

Brad Overton said he thinks something could have been done like look at that GIS or something.

Jeff Willis stated that problem is that GIS isn't always exact.

The President stated he is not sure but he is pretty sure that whoever took it over there told them it was divided.

Brad Overton asked what our way to prevent this would be, as far as any type of fines or something because this is obviously somebody circumventing the system.

Attorney Doll said a violation of the ordinance carries a \$300 fine but what we could do is clarify that fine could be applicable to further illegal subdivisions of subdivided properties.

Brad Overton asked if we could retroact the fine.

Attorney Doll said no.

Jeff Willis asked who would be fined.

Attorney Doll stated it would be whoever split the lots illegally.

Mrs. Rector asked if the Subdivision Ordinance had a fine in it or is it just in the Zoning Ordinance.

Attorney Doll said he thinks it is just in the Zoning Ordinance.

Brad Overton said the thing is that he knows people make mistakes but it is pretty obvious this was done intentionally.

Mrs. Rector said we run into that all the time, people that just don't know, and we try our best to make it as easy as possible for them.

Brad Overton added that he thinks the Board has been very accommodating to help people out in those situations, and like before with cleaning issues. He said if we have somebody that is not capable then we give them more time, but on things like this it is frustrating to see people blatantly disregard what they are supposed to do.

Attorney Doll stated there is no fine but it is a crime. He said on page 64, article IX "Any person who violates a provision of this Ordinance, or any regulation herein contained, shall be guilty of a Class C misdemeanor infraction for each day's violation."

Brad Overton asked how do we do that.

Attorney Doll said we file an information charging a violation, you have it set before a judge, there are hearings, and then you have trial.

The President stated you'd have to prove that they knowingly did it.

Mrs. Rector read from the Subdivision Ordinance “No Improvement Location Permit shall be issued for any property subject to the provisions of this OrdinanceAny land within the territorial limits of Warrick County, Indiana subdivided in violation of the terms of this Ordinance after the effective date hereof, is hereby declared to be a common nuisance and the owner of such land shall be liable for maintaining a common nuisance, which may be restrained, enjoined or abated in any appropriate action or proceeding.”

Attorney Doll said he will site those provisions in the letter to the affected parties.

The President said he would think that once they got notice, anything after that would fall into there.

Attorney Doll stated the Ordinances are presumed to be common knowledge and they are also on the web. He said he doesn't think our judges will have much sympathy for this; he is not predicting what they will or will not do though.

Mark Beard approached the podium. He stated he appreciates their actions tonight. He said one thing he'd like to ask and he doesn't know if Area Plan is the place to ask for it but they live in an older, blue collar neighborhood. He said there are a lot of kids and families, great neighbors, and they have called on the county to come out and replace coverts and they have done a phenomenal job. He said they do have an issue with the street. He said because Heathervale is on a hill there is a lot of washout and there is a sinkhole that continues to sink. He said the County has come out and patched it but it still sinking. He said they'd appreciate it if somebody would come out and come up with a permanent solution.

Attorney Doll asked if the sinkhole was located near any coverts.

Mark Beard said no.

Attorney Doll stated they might want to go to the Storm Water Management Board if it was. He said but if it is just poor conditions of the road then they need to contact the County Engineer, Bobby Howard. He said if it's mine subsidence it would be a whole different matter.

The President stated he would start with Bobby Howard.

Mark Beard said he knows it is not near any coverts. He said it is an older street, with the concrete blocks and several people have called in about the issue over the last several years but he knows how budget cuts have been and he understands but he wants to be sure that something gets done.

The President stated he would start with Bobby Howard and he would get him pointed in the right direction. He said after that point it is the County Commissioners that are responsible for the county roads.

Mark Beard said he understands.

EXECUTIVE DIRECTOR BUSINESS:

None

Upon a motion by Brad Overton and seconded by Jeff Willis the meeting was adjourned at 7:19 pm.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director